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Michael J. Masterson

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EXAMINER

ARK, DARREN W

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/826,905	Applicant(s) MASTERSON, MICHAEL J.	
	Examiner Darren W. Ark	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. No claims are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 04/23/2008. The Examiner agrees with the arguments presented in the election filed on 04/23/2008 with respect to the inclusion of claims 23-29 of Group II.

Claim Objections

2. Claims 62-79 are objected to because of the following informalities:

Claim 62, line 18, the term --the-- should be inserted before "presence".

Claim 70, line 14, the term --the-- should be inserted before "presence".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2, 9, 23-29, 36, 46, 47, 73 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 2, the term “the means for controllably exposing” lacks positive antecedent basis.

In regard to claim 2, the phrase “a side wall of the body having a transverse opening” renders the claim vague and indefinite since claim 1 recites “openings in the body” and therefore it is unclear whether the transverse opening is one of the openings in the body.

In regard to claim 9, the terms “a first opening in an outwardly facing surface of the side wall” and “a second opening in an inwardly facing surface of the side wall” render the claim vague and indefinite since they do not positively refer back to the openings in the body as set forth in claims 1 and 4.

In regard to claim 23, the term “the signal” lacks positive antecedent basis.

In regard to claim 36, line 3, the term “the soil” lacks positive antecedent.

In regard to claim 46, the phrase “the sidewall of the passage is tapered from a wide end distal to and a narrow end...” renders the claim vague and indefinite since it is unclear what other structure the wide end is distal to.

In regard to claim 73, the phrase "a passage...extending...between the opening in the exterior wall of the body" renders the claim vague and indefinite since claim 70 sets forth "a plurality of transverse openings in the exterior wall of the body" and it is therefore unclear whether the "opening" of claim 73 is referring back to the "transverse openings" of claim 70.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 9, 12-14, 17, 30, 31, 36, 37 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Volk et al. 5,988,102.

Volk et al. discloses a body (11); a test element (37-40, 59) comprising a test material (59); openings in the body (any openings and spaces between 11 & 36 along the length of 11 thereof including 20 which has portions on either side of 47, these openings being in the body since they are located within the confines of 11; openings are not being defined as being through the sidewall; openings not being particularly claimed) for controllably exposing the test element to the hazardous environment (the meat and the cooking apparatus which generates high heat); means for applying a load force to the test element (55), the load force being effective for displacing a portion of the test element when there is a predetermined amount of weakening of the test

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element (when 59 softens at a predetermined elevated temperature) caused by consumption thereof by the organisms (this functional recitation can be interpreted such that the device of Volk et al. is capable of indicating material weakening when an organism consumes the organic material 59 it will weaken it and thus cause the flag 49 to pop up); a flag member (45-49) movably supported relative to the body (see Fig. 2) and coupled to the test element (via 37-40) for movement in projecting relation to the body when the test element is weakened to the predetermined amount (softening of 59), with at least a portion of the flag member extending beyond the hazardous environment and being viewable from a distance (48 is positioned above the meat or poultry when desired inner temperature is reached and thus weakening in the test element 59 occurs to clearly signal when food is done).

In regard to claims 2 and 4, Volk et al. discloses the body (11) having a cavity (19), a sidewall (of 11) having a transverse opening (20 has an axis transverse to the plane of 13; opening not being claimed such that it extends transversely through the wall or relative to the axis of the body) and wherein the openings (spaces and openings between 11 & 36 are in the sidewall since they are defined within an interior of the body) are in a sidewall of the body and have an entrance passage (19).

In regard to claim 3 and the term “consumable structural material”, Volk et al. discloses that the material (59 can be organic [see col. 5, lines 63-end & col. 6, lines 1-2]).

In regard to claim 9, Volk et al. discloses the entrance passage (19) extending between a first opening (20) with a first area and a second opening (portion between 25

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& 21) with a second area, the second area being less than the first area (20 is larger in diameter than 25-21), the passage smoothly tapering between the first and second areas (see Figs. 1, 2; the taper is not being claimed as having a constant slope value).

In regard to claim 12, Volk et al. discloses the means for applying a load force comprising a spring (55), a first coupling (24) for anchoring one end to the bait element to the body, a second coupling (46) for connecting an opposite end of the bait element, and a spring (55) for applying tensile load to the bait element through the second coupling.

In regard to claim 13, Volk et al. discloses the flag member (47-49) connected to the second coupling (46).

In regard to claim 14, Volk et al. discloses a bait substance (59 is organic; bait substance not being particularly claimed) applied to the bait element (37-40, 44).

In regard to claim 17, Volk et al. discloses providing a housing body with a cavity (19) and a transverse side wall passage (20 has a dimension which is transverse to the long axis of 11; the passage is not being particularly claimed as extending through the sidewall in a direction which is transverse to the long axis of body 11); anchoring one end of the bait member (37-40, 44) to the body (via 25-21 and connection to 59); connecting a flag member (47-49) to an opposite end of the bait member (46) with the flag member extending proximate to a flag opening of the body (defined within 13); connecting a spring member (55) between the flag member (at 46) and the housing body (at 33); placing the body in a medium subject to infestation (meat is subject to infestation) by the organisms (organisms capable of reaching organic fusible material 59

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will degrade the fusible material; actions of the organisms cannot be positively recited since their actions are part of nature). In regard to the functional recitation "wherein upon consumption by eating activity of the organisms...", the Examiner contends that the bait member (46) is capable of being consumed and degraded by organisms due to its organic matter content and that the activity of the organisms, so long as they are allowed to act as functionally recited, is capable of occurring provided that the structure allows such to occur. The actions of the organisms are not being interpreted as a positive step in the method of the present invention since the organisms are not actively performing any of the steps of "a method for monitoring a predetermined cumulative each activity of organism on a bait member".

In regard to claim 23, Volk et al. disclose applying a force to the material (59, 37-40 are acted upon by 55; this method claim does not positively recite a step of placing the body in the soil); providing a passageway through at least a portion of the body (20 leads to 19) towards the material (59, 37-40), wherein the passageway is enclosed by one or more sidewalls (11), the passageway being tapered from a wide end (20) to a narrow end proximate to the material (33, 25, 27, 24, 21; see Figs. 1, 2); signaling the weakening of the material (via 47-49).

In regard to claims 27 and 37, Volk et al. discloses an annular shaped skirt (13).

In regard to claim 30, Volk et al. discloses a body (11) with an outer wall; a material consumable by the organism (59 is organic); a transverse opening in the wall (20 has a width which extends across 11 and is thus transverse to body 11) and has a diameter dimension to permit the organism to fit through the opening (20 has a width

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that allows rod 36, 47 to extend therethrough therefore it is capable of allowing an organism having an equal or lesser diameter than rod 36, 47 to fit therethrough; no particular dimension being recited); a passage (19) extending between the opening (20) and the material (59), the passage is enclosed by a sidewall of the passage (19 defined by inner wall of body 11) which is tapered from a wide end (at 23) to a narrow end (25-21); and a spring (55) applying a force to the material sufficient to cause the displacement of at least a portion of the material when there is a structural weakening of material (59), the displacement effectuating an exterior projection of a signaling member (48) from the body indicating the presence of the organism in the device (any weakening of organic material 59 causes spring 55 to force cap 48 upwardly and away from rest of device 10).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-8, 10-18, 38-57, 60-63, 65-73, 75-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess 3,564,750 in view of Su 6,397,516.

In regard to claims 1, 3, 17, 23, 38, and 62, Burgess discloses a body (12); a test element (7, 9, 10) supported relative to the body (9 received within slot in 12 and positioned slightly above with 7); an opening in the body (slot in 12); means for applying

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a load force (5) to the test element (7, 9, 10); and a flag member (6) movably supported relative to the body (12) and coupled to the test element (via 7, 8) for movement in projecting relation to the body (when 8 is severed, then 6 is free and projected from 12), with at least a portion of the flag member extending beyond the hazardous environment (the hazardous environment comprises the immediate area about 7, 9, 10, & 12) and being viewable from a distance (particular distance is not being claimed; removal of top cover 1 would reveal to user if 6 has moved from its original position), but does not disclose the body comprising openings or transverse side wall passage in the body or the opening through the outer wall of the body housing for providing passage for the organisms through the body to the test material. Su discloses a side wall of the body (openings in station housing in Fig. 2B or casing of cellulose-containing material on bait tube in Fig. 3 comprising appropriate openings which extend transverse to the long axis of the body) having an opening (appropriate openings) therein for communicating with the hazardous environment (soil). It would have been obvious to one of ordinary skill in the art to modify the side wall of the body of Burgess such that it has an opening therein for communicating with the hazardous environment in view of Su in order to accommodate the horizontal tunneling habits of the organisms and to provide means for guiding the organisms directly to the bait element to facilitate and speed up detection for the user.

In regard to claims 5, 6, 18, 39-44, 53-57, 65-67, and 75-77, Burgess does not disclose the barrier disposed between the outer wall and the material or the barrier comprising perforations or being porous. Su discloses a barrier (casing on bait tube in

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Fig. 3 comprising appropriate openings) disposed between the outer wall (station housing in Fig. 2B) and the material (non-rigid matrix comprising cellulose containing materials), the barrier comprising perforations (casing comprising appropriate openings; see col. 11, lines 6-10) and being both porous (appropriate openings) and consumable by the organism (cardboard and other cellulose materials; see col. 11, lines 16-23). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess such that there is a barrier disposed between the outer wall and the material and the barrier comprising perforations and being porous in view of Su in order to provide means for maintaining the integrity of the bait and to further shield the bait material from degradation due to the decomposition that occurs in moist soil to thereby preserve the bait material so that it is primarily eaten and degraded by the organisms so that the user is reliably assured that the device detects weakening of the material due to the actions of the organisms.

In regard to claim 10, Burgess does not disclose a sidewall of the body having vertically spaced plurality of entrance passages or a consumable porous barrier. Su discloses the body (bait tube or station housing) having vertically spaced plurality of entrance passages (see Figs. 2B, 3) and a consumable porous barrier (casing on bait tube in Fig. 3 comprising appropriate openings). It would have been obvious to one of ordinary skill in the art to modify the body of Burgess such that it has vertically spaced plurality of entrance passages and a consumable porous barrier in view of Su in order to provide many entrances which are oriented in a horizontal direction which is conducive

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for the organisms to gain access to the bait material and also to provide means for preserving the integrity of the bait material while further attracting the organisms thereto.

In regard to claim 12, Burgess discloses the means for applying a load force comprising a first coupling for anchoring one end of the bait element (10 and lower portion of 12 receiving lower end of 9) to the body (12), a second coupling (7) for connecting an opposite end of the bait material (7 is closer to the top end of 9), and a spring (5) for applying tensile load to the bait element (7, 9, 10) through the second coupling.

In regard to claim 13, Burgess discloses the flag member (6) connected to the second coupling (7).

In regard to claims 14 and 16, Burgess does not disclose the bait element having a bait substance applied thereto or the bait element being a cardboard member. Su discloses a monitoring device which is modified chemically to increase the possibility that the target pest will enter and move within the device by employing food, moisture, dry rot fungus, and pheromones or other mimics. Su also discloses that the material used to package the monitoring mixture can be a cellulose-containing material such as cardboard that is palatable to termites (see col. 14, lines 23-30). It would have been obvious to a person of ordinary skill in the art to modify the bait element of Burgess such that it has a bait substance applied thereto and is a cardboard member in view of Su in order to provide means for making the bait element more attractive and also to provide a bait element which is a common off the shelf item which is readily available.

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In regard to claims 49, 61, 69, and 79, Burgess does not disclose an annular shaped skirt around the body near the end of the body distal from the soil. Su discloses an annular shaped skirt (cover as discussed at col. 15, lines 21-53 OR 19) around the body (station housing OR 1) near the end of the body distal from the soil (top end of station housing OR 12, 13). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess such that it has an annular shaped skirt around the body near the end of the body distal from the soil in view of Su in order to provide means for protecting the integrity of the bait material therein, prevent tampering but unauthorized individuals, and for reducing the effect of above ground elements on the bait material.

In regard to claim 50, Burgess discloses a body housing (1, 2) with an outer wall comprising an opening (defined by 11) and a body core (12) comprising a passage (slot in 12) which extends across the width of the outer housing and a front face of the which overlapping the opening (slot of 12 overlaps opening defined in 11); a material (9) consumable by the organism which extends along of the length of the body housing (9 has a portion along the length of 12); and a spring (5). Alternatively Burgess discloses a body housing (11) defining an inner cavity (between 11), the outer wall comprising an opening (at bottom of 11); a body core (12) comprising a passage (slot in 12) which overlaps the opening (coincident); a material (9) extending along the length of the body housing (11); and a spring (5). Burgess does not disclose the body core comprising a radial passage or the material extending most of the length of the body housing. Su discloses a body (station housing) comprising a radial passage (openings in the station

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housing and bait tube) and the material (bait tube or monitoring device) consumable by the organism which extends most of the length of the body housing (see Figs. 1A-3). It would have been obvious to one of ordinary skill in the art to modify both the body of Burgess such that it comprises a radial passage and the material consumable by the organism of Burgess such that it extends most of the length of the body housing in view of Su in order to accommodate the horizontal tunneling habits of the organisms, to provide means for guiding the organisms directly to the bait element to facilitate and speed up detection for the user, and to provide the material consumable by the organism over a majority of the length of the body housing so that organisms at varying depths within the soil will encounter the material and more likely enable detection of their presence.

Also in regard to claims 32, 33, 40, 41, 53, 54, 65, 66, 75, and 76, Burgess discloses a barrier (1, 2 made of wood) comprising perforations (holes allowing wires X, Y to pass therethrough).

In regard to claim 60, Burgess discloses a flag (6, 8) for movement in projecting relation to the body core (12), with at least a portion of the flag (6, 8) extending externally from the body housing (11) and being viewable from a distance (removal of cover 1 would allow user to see that 6 has moved away from 11; no particular distance is being recited) indicating presence of organisms in the device.

In regard to claim 70, Burgess discloses a body (1, 2, 12); a material (7, 9, 10); a cavity within the body (inside 1, 2), the cavity smaller than the body (since the cavity is inside 1, 2 it is therefore smaller than the outside of 1, 2), the cavity being near the top

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end of the body (near top of 1, 2); a spring (5) within the cavity, a weakening of the material causes an end of the spring to undergo a displacement which effectuates an exterior projection of a signaling member from the body (6 projects away from 12 when 8 is broken) indicating presence of the organism in the device (when 6 strikes 3), but does not disclose a plurality of transverse openings in the exterior wall of the body. Su discloses a plurality of transverse openings in the exterior wall of the body dimensioned to permit the organisms to fit through (openings in station housing in Fig. 2B or casing of cellulose-containing material on bait tube in Fig. 3 comprising appropriate openings which extend transverse to the long axis of the body). It would have been obvious to one of ordinary skill in the art to modify the body of Burgess such that it has a plurality of transverse openings therein to permit the organisms to fit through in view of Su in order to accommodate the horizontal tunneling habits of the organisms coming from various depths and directions toward the body and to provide means for guiding the organisms directly to the bait element to facilitate and speed up detection for the user.

In regard to claim 72, Burgess discloses a second cavity (slot in 12) within the body containing the material (7, 9, 10), the second cavity having an interior wall (12) and an opening (slot in 12).

9. Claims 9, 46, 47, 49, 58, 59, 61, 64, 69, 74, 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess 3,564,750 in view of Su 6,397,516 as applied to claims 4, 38, 45, 50, 62, 70, 72 above, and further in view of Woodruff 5,901,496.

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In regard to claims 9, 46, 58, and 74, Burgess and Su do not disclose the entrance passage with the second opening having a second area less than the first area so that the passage smoothly tapers between the first and second areas or the passage with a sidewall that is tapered from a wide end distal from the bait material to a narrow end proximate to the bait material. Woodruff discloses the passage (8) tapered from a wide end (outer end of 8 in Fig. 1) distal from the bait material (10) and a narrow end (inner end of 8) proximate the bait material (10), and wherein the sidewall is tapered linearly (see Fig. 1). It would have been obvious to one of ordinary skill in the art to modify the radial passage of Burgess and Su such that it has a sidewall that is tapered from a wide end distal from the bait material to a narrow end proximate to the bait material in view of Woodruff in order to funnel the organisms toward the bait material so as to guide the organisms to the bait material and thus expedite detection of the termites when present.

Alternatively in regard to claims 49, 61, 69, and 79, Burgess and Su do not disclose an annular shaped skirt around the body near the end of the body distal from the soil. Woodruff disclose an annular shaped skirt (19) around the body (station housing OR 1) near the end of the body distal from the soil (12, 13). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess and Su such that it has an annular shaped skirt around the body near the end of the body distal from the soil in view of Woodruff in order to provide means for protecting the integrity of the bait material therein, prevent tampering but unauthorized individuals, and for reducing the effect of above ground elements on the bait material.

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10. Claims 19-37, 80, 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess 3,564,750 in view of Su 6,397,516 and Woodruff 5,901,496.

In regard to claims 19, 23, 30, 80, and 81, Burgess discloses at least a portion of the flag member (6) extending beyond the body (when 6 is released from 9 and body 12 via 7, 8 then it extends beyond the extent of 12) and being viewable from a distance (distance not being particularly claimed), but does not disclose a sidewall of the body having vertically spaced plurality of entrance passages/a transverse passageway disposed through at least a portion of the body or a consumable porous barrier. Su discloses the body (bait tube or station housing) having vertically spaced plurality of entrance passages/a transverse passageway disposed through at least a portion of the body (see Figs. 2B, 3) and a consumable porous barrier (casing on bait tube in Fig. 3 comprising appropriate openings). It would have been obvious to one of ordinary skill in the art to modify the body of Burgess such that it has vertically spaced plurality of entrance passages and a consumable porous barrier in view of Su in order to provide many entrances which are oriented in a horizontal direction which is conducive for the organisms to gain access to the bait material and also to provide means for preserving the integrity of the bait material while further attracting the organisms thereto. Burgess and Su do not disclose the entrance passages having second areas being less than first areas. Woodruff discloses entrance passages with second areas (inner ends of 8) being less than first areas (outer ends of 8). It would have been obvious to one of ordinary skill in the art to modify the entrance passages of Burgess and Su such that they have second areas being less than first areas in view of Woodruff in order to

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provide means for funneling the insects from afar toward the bait material so as to expedite detection of termites for the user.

In regard to claims 23, 26, and 30, Burgess discloses signaling the weakening of the material resulting from its exposure to the organisms, the signal comprising an exterior projection of a signaling member from the body (6, 7, or 8 is projected from 12) and ejecting at least a portion of the flag (7 or 8) from body (12).

In regard to claims 27 and 37, Burgess does not disclose an annular shaped skirt around the body near the end of the body distal from the soil. Woodruff disclose an annular shaped skirt (19) around the body (station housing OR 1) near the end of the body distal from the soil (12, 13). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess such that it has an annular shaped skirt around the body near the end of the body distal from the soil in view of Woodruff in order to provide means for protecting the integrity of the bait material therein, prevent tampering by unauthorized individuals, and for reducing the effect of above ground elements on the bait material.

In regard to claim 28, Burgess discloses providing an outer housing (1, 2, 11) around the body (12), the outer housing having an opening (between 11).

11. Claims 1-18, 23-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess 3,564,750 in view of Woodruff 5,901,496.

In regard to claims 1, 2, 4, 23, 30, 38, 50, 62, 70, 80, and 81, Burgess does not disclose the body comprising transverse openings in the sidewall of the body. Woodruff discloses the body (1) comprising transverse openings (2) in the sidewall of the body. It

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would have been obvious to one of ordinary skill in the art to modify the body of Burgess such that it has a plurality of transverse openings in view of Woodruff in order to provide means for directing and guiding the organisms to the material to be consumed by the organisms at various depths within the soil and different directions about .

In regard to claims 4 and 50, Burgess discloses a body housing (1, 2) with an outer wall comprising an opening (defined by 11) and a body core (12) comprising a passage (slot in 12) which extends across the width of the outer housing and a front face of the which overlapping the opening (slot of 12 overlaps opening defined in 11), but does not disclose the body core comprising a radial passage. Woodruff discloses a body (1, 10) comprising a radial passage (2, 8). It would have been obvious to one of ordinary skill in the art to modify the body of Burgess such that it comprises a radial passage in view of Woodruff in order to accommodate the horizontal tunneling habits of the organisms and to provide means for guiding the organisms directly to the bait element to facilitate and speed up detection for the user.

In regard to claims 27, 37, 49, 61, 69, and 79, Burgess does not disclose an annular shaped skirt around the body near the end of the body distal from the soil. Woodruff disclose an annular shaped skirt (19) around the body (station housing OR 1) near the end of the body distal from the soil (12, 13). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess such that it has an annular shaped skirt around the body near the end of the body distal from the soil in view of Woodruff in order to provide means for protecting the integrity of the bait material

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therein, prevent tampering but unauthorized individuals, and for reducing the effect of above ground elements on the bait material.

Also in regard to claims 5, 6, 32, 33, 40, 41, 53, 54, 65, 66, 75, and 76, Burgess discloses a barrier (1, 2 made of wood) comprising perforations (holes allowing wires X, Y to pass therethrough). Also in regard to claims 6, 33, 41, 54, 66, and 76, Burgess and Woodruff disclose the barrier (7 of Woodruff) comprising perforations (8 of Woodruff).

In regard to claims 25, 30, 46, 47, 58, 59, 64, 73, 74, 80, and 81, Burgess does not disclose the passageway being tapered from the from a wide diameter end to a narrow diameter end. Woodruff discloses the passage (8 of Woodruff) tapered from a wide end (outer end of 8 in Fig. 1 of Woodruff) distal from the bait material (10 of Woodruff) and a narrow end (inner end of 8 of Woodruff) proximate the bait material (10 of Woodruff), and wherein the sidewall is tapered linearly (see Fig. 1 of Woodruff). It would have been obvious to one of ordinary skill in the art to modify the body of Burgess such that it has a transverse passage which tapers from a wide diameter end to a narrow diameter end in view of Woodruff in order to promote the funneling of organisms from a wide area to the bait material at a specific locations to assure detection.

12. Claims 5-8, 18, 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess 3,564,750 in view of Woodruff 5,901,496 as applied to claims 4, 17, 50 above, and further in view of Su 6,397,516.

In regard to claims 5 and 18, Burgess and Woodruff disclose a barrier (1 or 7) covering the entrance passage (8 or 2), but do not disclose the barrier member being formed of a sheet of consumable porous material. Su disclose the barrier member

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(casing on bait tube in Fig. 3 comprising appropriate openings or openings in station housing disposed over the bait tube with openings therein) covering the entrance passage (non-rigid matrix comprising cellulose containing materials) and being formed of a sheet of consumable porous material (comprising cardboard and other cellulose materials; see col. 11, lines 16-23 and having appropriate openings). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess such that there is a barrier covering the entrance passage and the barrier comprising a consumable porous material in view of Su in order to provide means for maintaining the integrity of the bait and to further shield the bait material from degradation due to the decomposition that occurs in moist soil to thereby preserve the bait material so that it is primarily eaten and degraded by the organisms so that the user is reliably assured that the device detects weakening of the material due to the actions of the organisms and also to provide a barrier which can be consumed by the organisms so as to provide further attractive effects.

Alternatively in regard to claim 54, Burgess and Woodruff does not disclose the barrier comprising perforations. Su discloses a barrier (casing on bait tube in Fig. 3 comprising appropriate openings) disposed between the outer wall (station housing in Fig. 2B) and the material (non-rigid matrix comprising cellulose containing materials), the barrier comprising perforations (casing comprising appropriate openings; see col. 11, lines 6-10) and being both porous (appropriate openings) and consumable by the organism (cardboard and other cellulose materials; see col. 11, lines 16-23). It would have been obvious to one of ordinary skill in the art to modify the device of Burgess

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such that there is a barrier disposed between the outer wall and the material and the barrier comprising perforations and being porous in view of Su in order to provide means for maintaining the integrity of the bait and to further shield the bait material from degradation due to the decomposition that occurs in moist soil to thereby preserve the bait material so that it is primarily eaten and degraded by the organisms so that the user is reliably assured that the device detects weakening of the material due to the actions of the organisms.

Response to Arguments

13. Applicant's arguments filed 09/03/2008 have been fully considered but they are not persuasive.

In regard to applicant's argument that "Burgess '750 or Volk '102...Claim 1 further comprises a transverse opening...", the Examiner contends that the term "transverse opening" does not have particular meaning not shown or disclosed in either Burgess or Volk. Furthermore, applicant has not recited that the opening is transverse relative to any other structure of the body and therefore the Examiner is able to interpret the opening as being transverse to relative to any structure of the body without concern for configuration or orientation since the claims do not require any particular configuration or orientation.

In regard to applicant's argument that "...a flag member 'extending beyond the hazardous environment...'...Volk '102...", the Examiner contends that the hazardous environment has not been positively recited as part of the desired invention and that the

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hazardous environment of Volk is disclosed as being the poultry or meat and that the hazardous condition is the level of heat within the poultry or meat and that too high of a level of heat is a hazardous condition wherein burning may occur. Applicant has not particularly recited in all of the claims that the body comprises a transverse opening through the sidewall of the body from an outer surface to an inner surface allowing communication between the soil and the material to be consumed which would clearly overcome Volk which only has a single passage extending along the length of the body.

In regard to applicant's argument that "Burgess '750 does not disclose an elongate body have a transverse side wall passage...", the Examiner contends that Su and Woodruff were relied upon for their disclosure of body housings with side wall passages. The Su and Woodruff patents show that it is old and well known to place cellulose containing baits within reusable housings with passages therein to allow their respective devices to be implanted into the ground and provide free access to the cellulose baits for the termites.

In regard to applicant's argument that "...passageway being tapered...'...Woodruff '496 comprise slots extending a substantial arc around the unit. Though there is a narrowing effect...", the Examiner contends that Woodruff clearly discloses the passageways in Fig. 1 that have wide diameter ends at the outermost surface of the body (1) and a narrow diameter end at an inner surface of the body (inner surface of 1).

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ballard 6,187,328 discloses a bait station comprising a body (12) which is generally elongate in shape in a direction transverse to the direction in which the device is oriented in the soil (see Fig. 3 wherein long axis of body 13 is oriented perpendicular to the downward direction in which the body extends into the soil). Randon 5,832,658 discloses bait material comprising cardboard (B is corrugated paper).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W. Ark/
Darren W. Ark
Primary Examiner
Art Unit 3643

DWA